

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICKY R. MARES,

Petitioner,

ORDER

v.

15-cv-677-wmc
02-cr-143-wmc

UNITED STATES OF AMERICA,

Respondent.

Petitioner Ricky R. Mares, by counsel, seeks to vacate the sentence imposed in Case No. 02-cr-143 under 28 U.S.C. § 2255 in light of the United States Supreme Court's recent holding in *United States v. Johnson*, 135 S. Ct. 2551 (2015), which held that the residual clause in the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B), violates the due process clause of the Fifth Amendment. Although this is petitioner's second motion for § 2255 relief, it is properly before this court because the Court of Appeals for the Seventh Circuit has authorized his proceeding pursuant to 28 U.S.C. § 2255(h)(2).

Petitioner's motion is timely under § 2255(f)(3), which provides a one-year statute of limitation from the date the Supreme Court recognizes a new rule of constitutional law. On April 10, 2003, petitioner was sentenced, upon a guilty plea, on one count of being a felon in possession of a firearm. *See* 18 U.S.C. § 922(g). Pursuant to the terms of the ACCA, the court found that petitioner had three qualifying predicate convictions which warranted imposition of 195 months in prison, consecutive to a state sentence.

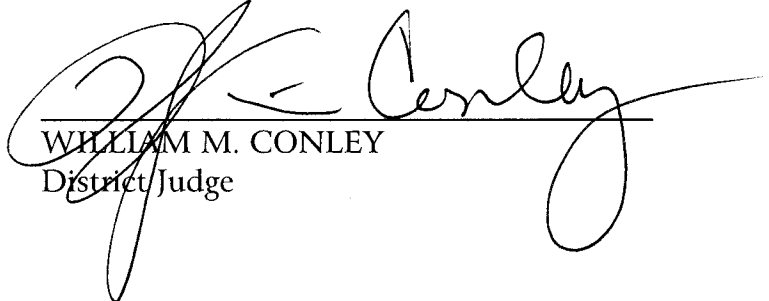
Petitioner indicates that this motion is “unopposed,” and that Assistant United States Attorney Rita Rumbelow informed petitioner’s counsel that the government does not oppose the motion. The parties agree that under *Johnson*, petitioner is entitled to immediate release from prison. Accordingly, petitioner’s motion will be granted. The defendant will be required to appear at a hearing jointly requested by the parties to address the terms of supervised release at a time to be set. The proposed updated conditions of supervised were filed in the second addendum to the presentence report on October 21, 2015. (Docket No. 34).

ORDER

IT IS ORDERED that the Unopposed Petition to Vacate Sentence Under 28 U.S.C. § 2255 is GRANTED. The court shall impose a sentence of time served, effective, October 23, 2015. The term of supervised release shall be three years in accordance with 18 U.S.C. § 3583(b)(2).

Entered this 22nd day of October, 2015.

BY THE COURT:



WILLIAM M. CONLEY
District Judge